



United States Department of Agriculture

Food Safety and
Inspection Service
1400 Independence
Avenue, SW,
Washington, D.C.
20250

Dena Jones
Director
Farmed Animal Program
Animal Welfare Institute
900 Pennsylvania Avenue, SE
Washington, DC 20003

August 28, 2024

Dear Ms. Jones:

This letter responds to the January 2016 petition you submitted on behalf of the Animal Welfare Institute (AWI) requesting that the Food Safety and Inspection Service (FSIS) amend its poultry products labeling regulations to define “free range” and to amend the substantiation requirements for approval of the claim (Petition 16-01). The petition specifically requested that FSIS amend its regulations to require that all poultry products labeled with a “free-range,” “free-roaming,” or “range-grown” claim be derived from birds raised under the following conditions:

- a.** Birds must be provided the continuous opportunity to go outdoors during daylight hours for at least 51 percent of their lives.
- b.** The number and size of exits must be sufficient to allow all birds ready, unhindered access to the outdoors.
- c.** Outdoor areas must provide natural or artificial shelter as protection against adverse weather conditions and overhead predators and provide shade.
- d.** The areas to which birds have access must be mainly covered with living, palatable vegetation.
- e.** The minimum outdoor space allowance per bird shall be 5 sq. ft. for chickens and 20 sq. ft. for turkeys, ducks, and geese.

Moreover, the petition requested that FSIS amend its regulations to state that meat from a bird having access to the outdoors for less than 51 percent of their life, due to adverse weather or any other condition, shall not be labeled with a “free-range” or similar type claim. The petition also asked FSIS to require that applications for such claims be accompanied by a signed affidavit, along with the animal care protocol and photographs that apply to all operations where birds are raised and document compliance with all conditions described above. In the alternative, the petition requested that FSIS incorporate the requested changes into its animal-raising claims guidance documents.

AWI’s January 2016 petition asserted that the requested action was necessary because FSIS’ definitions for “free-range” and similar claims may lead to misbranding and may harm farmers. The petition likewise asserted that FSIS’ substantiation requirements for such claims were insufficient. The petition

included several exhibits as support, including FSIS guidance documents, Agency communications, label records, and consumer survey data. As explained below, after reviewing your petition, exhibits, and related public comments, FSIS decided to partially grant your petition by updating its animal-raising claims guidance.

FSIS' 2019 Interim Response to AWI's Petition

In December 2019, FSIS issued an interim response to your petition.¹ The response noted that on December 27, 2019, FSIS published a *Federal Register* notice announcing an updated version of its animal-raising claims guideline (84 FR 71359). As discussed in the 2019 notice, FSIS updated the guideline in response to your petition by adding additional information on the types of documentation typically needed to substantiate “free-range” and similar claims on poultry products. Specifically, it provided that, for FSIS to approve such claims, the establishment should provide documentation substantiating the housing conditions of the birds, as well as demonstrate that the birds have continuous, free access to the outside throughout their normal growing cycle. FSIS also updated the 2019 guideline to clarify that FSIS does not consider birds to be “free range” if they stay in their housing or coops all winter due to adverse conditions.

The 2019 notice also invited interested persons to comment on FSIS’ guideline regarding “free-range” claims for poultry products. In response, FSIS received 9,118 comments. Several consumers and animal advocacy groups asserted that “free-range” and similar claims could be considered misleading because they do not always match consumer expectations. The commenters argued that such claims misrepresent raising conditions and may suggest animals are being treated better than they are. An animal advocacy organization stated that the “outdoor access” claim has an inherent tendency to mislead, because it is often used for birds that are confined indoors.

FSIS also received several comments from consumers, animal advocacy groups and industry groups requesting that FSIS clearly define “free-range” and similar raising claims and clarify what was stated in the 2019 guideline. Commenters suggested that for producers to be able to use the claim, they must, at a minimum, demonstrate that the animals have consistent, easy access to range that includes soil, vegetation, and plenty of room to roam, as well as shelter from extreme weather events and protection from predators. According to these commenters, this substantiation would ensure that producers are providing a meaningful level of animal care and meeting the standard of animal welfare that consumers expect when purchasing products labeled “free range.”

Many commenters including an industry group and an animal advocacy group disagreed with the guideline that the claim “free range” is synonymous with the other claims like “free roaming,”

¹ See: https://www.fsis.usda.gov/sites/default/files/media_file/2020-08/16-01-response-123019.pdf.
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“pasture fed,” “pasture grown,” “pasture raised,” and “meadow raised.” These commenters argued that the practices associated with these other claims have fundamentally different production practices and animal welfare implications. As explained below, FSIS has further updated its guidance in response to your petition and the comments on the 2019 version of the guideline.

FSIS’ 2024 Guideline Update

On August 28, 2024, FSIS posted a *Federal Register* notice announcing additional updates to its guidance in response to AWI’s petition, other petitions received by the Agency, public comments on the 2019 guideline, and other feedback from stakeholders.² The notice also discussed AWI’s petition.

As in the previous iteration of the guideline, the updated guideline discusses the specific documentation establishments should submit to FSIS to substantiate “free-range” or similar claims for poultry products. Such documentation includes detailed written descriptions of controls for ensuring that the animals are raised in a manner consistent with the claim from birth to slaughter or the period of raising being referenced by the claim and a signed and dated document describing how the animals are raised to support that the claims are not false or misleading. As discussed above, this guidance explains that documentation should specifically describe the housing conditions for the birds and demonstrate they have continuous, free access to the outside throughout their normal growing cycle. Establishments should also provide a written description of the product tracing and segregation mechanism from time of slaughter or further processing through packaging and wholesale or retail distribution as well as a written description of the identification, control, and segregation of non-conforming animals or products. Moreover, for claims certified under a third-party certification program, establishments should provide a copy of their current certification.

In addition, the updated guideline recommends that establishments provide additional documentation to substantiate label claims like “pasture raised,” “pasture fed,” “pasture grown,” and “meadow raised.” Specifically, the documentation should demonstrate products labeled as such are derived from animals raised on pasture, i.e., land where the majority is rooted in vegetative cover with grass or other plants, for the majority of their life span from birth until slaughter. Also, to improve readability, FSIS updated language in the guideline to better emphasize that it does not consider birds to be “free range” if they stay in their housing or coops for the duration of their growing cycle due to weather conditions.

FSIS’ guideline also now strongly encourages establishments to use a third-party certification to substantiate all animal-raising claims, including claims like “free range.” Further, the guideline recommends criteria for certifiers, including that certification should be performed by an

² <https://www.fsis.usda.gov/policy/federal-register-rulemaking/federal-register-notices>.
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organization independent of the establishment paying for the certification, and that the third-party organization should routinely audit, validate, and verify claims on the label to ensure they meet related standards. If a “free-range” or similar claim is certified by a third-party organization, FSIS will approve the label bearing the claim only if it includes the certifying entity’s name, website address (where the relevant standards can be found), and logo, when the organization has a logo. An asterisk or other symbol must connect the claim to this information on the label.

FSIS’ Final Response to AWI’s Petition

AWI’s petition asserted that the requested action is necessary because FSIS’ definition of “free range,” which only requires that birds have outdoor access, does not align with consumer expectations and, thus, may lead to misbranding. The petition further asserted that FSIS’ inadequate definition has a negative effect on farmers whose practices exceed FSIS’ definition. At this time, FSIS has decided not to codify AWI’s proposed definition for “free-range” or similar claims in its regulations. FSIS maintains that animal production practices vary and are continuously developing and that codifying allowable animal-raising claims would be impractical. Codifying definitions for animal-raising claims could also hinder the development of new or improved animal production practices. Producers consistently innovate practices to improve the raising of livestock or poultry from birth to slaughter. Likewise, consumer expectations of animal-raising claims consistently evolve. If animal-raising claims are codified, producers that improve their animal-raising practices could lose the benefit of making certain claims, even if the improved practices better align with changing consumer expectations for such claims.

Furthermore, FSIS believes that it would not be economically feasible for many small and very small establishments to incur the cost of revising their labels to meet new codified definitions because of their low sales volumes. FSIS also believes that codifying “free-range” or other animal-raising claims would limit adoption of these claims by establishments, which would limit the types of products available to consumers. FSIS’ current procedure, which provides for label-by-label review of the producer’s animal production protocol, is effective in ensuring that labels bearing “free-range” or similar claims are truthful, not misleading, and otherwise in compliance with the Acts.

AWI’s petition also asserted that FSIS’ substantiation requirements were insufficient and may lead to misbranding. Moreover, AWI claimed that the Agency previously approved “free-range” claims without adequate documentation. As noted above, FSIS has updated its guideline, in response to AWI’s petition, to now include the specific documentation establishments should submit to substantiate claims like “free range” or “pasture raised.” These updates will help ensure that labels are adequately and consistently substantiated before they are approved for use in commerce. FSIS notes that it continues to review every “free-range” and similar claim to ensure it is truthful, not misleading, and not otherwise misbranded. For FSIS to approve such

claims, an establishment must submit documentation to FSIS that sufficiently supports the claim. FSIS often consults with its Federal partners, *e.g.*, the USDA's Agricultural Marketing Service, to decide whether the documentation submitted in support of an animal-raising claim provides the level of detail needed to ensure that the claim is truthful and not misleading. Ultimately, the kind and amount of documentation needed to substantiate labeling claims depends on the specific claim and could vary according to circumstances. Thus, at this time, FSIS has decided not to codify specific documentation requirements in its regulations as requested by AWI.

AWI's petition further asserted that FSIS guidance provided inconsistent information on the use of claims like "free range." FSIS investigated the issue and, in response, updated two documents mentioned in the petition to ensure they are consistent with our 2024 guideline (see: [Meat and Poultry Labeling Terms](#) and [Turkey from Farm to Table](#)). FSIS also removed inconsistent information from its website. FSIS thanks AWI for making us aware of the issue.

In accordance with our petition regulations, we have posted your petition on the FSIS website (9 CFR 392.6). We intend to post this response as well.

Sincerely,

A handwritten signature in black ink, appearing to read "Rachel Edelstein". The signature is fluid and cursive, with the first name "Rachel" being more prominent than the last name "Edelstein".

Rachel Edelstein
Assistant Administrator
Office of Policy and Program Development